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Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
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225094

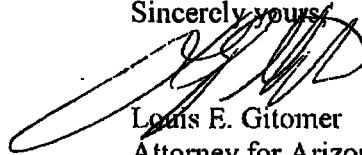
RE: Docket No. AB-1022 (Sub-No. 1X), *Arizona & California
Railroad Company Abandonment Exemption—in San Bernardino
and Riverside Counties, CA (Between Rice and Ripley)*

Dear Acting Secretary Quinlan:

Enclosed for efilng by the Arizona & California Railroad Company ("ARZC") is
Rebuttal.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for Arizona & California Railroad
Company

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-1022 (Sub-No. 1X)

ARIZONA & CALIFORNIA RAILROAD COMPANY—ABANDONMENT—
IN SAN BERNARDINO AND RIVERSIDE COUNTIES, CA
(BETWEEN RICE AND RIPLEY)

REBUTTAL

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RAILROAD COMPANY

Dated: May 11, 2009

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SURFACE TRANSPORTATION BOARD

Docket No. AB-1022 (Sub-No. 1X)

ARIZONA & CALIFORNIA RAILROAD COMPANY—ABANDONMENT—
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(BETWEEN RICE AND RIPLEY)

REBUTTAL

The Arizona & California Railroad Company ("ARZC") files Rebuttal to the Reply in Opposition to Petition for Exemption (the "Reply") filed on April 21, 2009 by the Committee for the Preservation of the Rice-Blythe-Ripley Rail Line (the "Committee").

ARZC filed a Petition for Exemption (the "Petition")¹ on March 12, 2009 seeking an exemption in order to abandon a 49.40-mile rail line between Rice, CA, milepost 0.0, and Ripley, CA, milepost 49.4 in San Bernardino and Riverside Counties, CA (the "Line") from the prior approval requirements of 49 U.S.C. §10903. The Petition contained ARZC's case-in-chief and included verified statements from Marc R. Bader (Petition Vol. I, 82-104), Mr. Robert M. Frelich, Jr. (Petition Vol. I, 105-114), and Mr. Charles W. (Sandy) Rex (Petition Vol. II). The Reply did not contain verified statements or any other evidence.

This Rebuttal addresses the arguments made by the Committee through reference to the facts in the Petition and corrects serious misstatements of law made by the Committee.

¹ Citations to the Petition will be "Petition Vol. I" for Volume I and "Petition Vol. II" for Volume II.

BACKGROUND

ARZC is a Class III railroad that was created by the spin-off of a light density rail line by the Atchison, Topeka and Santa Fe Railway Company (the "ATSF") in 1991.² The Line, which was constructed in 1920 of light weight rail is 49.4 miles in length with all of the traffic originating or terminating near the southern stub end of the Line. At the time of the acquisition from the ATSF, traffic on the Line was less dense than traffic on the remainder of the properties acquired. Traffic on the Line has declined since the acquisition.

In recent years, ARZC has economized its operations and maintenance of the Line in an effort to continue to provide rail service. However, despite these efforts, traffic on the Line continued to decline to the point where ARZC could no longer afford to operate or maintain the Line, much less pay to rehabilitate the Line.

As a result of the declining traffic and deteriorating condition of the Line, ARZC imposed a surcharge on the Line of \$800 per car on December 8, 2006. The surcharge did not reduce the volume of traffic to and from the Line, but it did result in shippers on the Line transloading their train traffic before it entered the Line to avoid the surcharge.³ Because the surcharge did not generate the revenue that ARZC expected, ARZC continued to economize until the track reached a condition where it was unsafe to operate and ARZC imposed Embargo ARZC000107 on December 18, 2007. Petition Vol. I, at 130. ARZC then began the abandonment process by publishing a system diagram map for the Line on June 2, 2008. ARZC served its Combined

² *Arizona & California Railroad Co. Limited Partnership—Acquisition and Operation Exemption—the Atchison, Topeka and Santa Fe Railway Co.*, ICC Finance Docket No. 31863 (ICC served May 16, 1991).

³ It should be noted that even though 110 carloads were transloaded and did not move over the Line in 2007, ARZC counted that traffic in determining the volume on the Line and the revenue generated by the Line. Petition Vol. I, at 108.

Environmental and Historic Report (the "CEHR") on October 31, 2008. Petition Vol. I, at 18.

Although the embargo expired on December 18, 2008, ARZC issued Embargo ARZC000108 on December 22, 2008. Petition Vol. I, at 129.

ARZC then published notice of the filing in the San Bernardino Sun⁴ on March 6, 2009. ARZC filed the Petition with the Board on February 12, 2009 and served the Petition in accord with the requirements of 49 C.F.R. 1152.60(d). Petition Vol. I, at 80. At no time has a formal complaint been filed with the Board by the Committee, any purported member of the Committee, or anyone else concerning service or rates on the Line.

The Board served a notice of the filing of the Petition.⁵ The Reply was filed on April 21, 2009. The Reply consists of three pages naming purported members of the Committee, 19 pages of argument, and three unverified letters addressed to the Committee. There is not a single verification or witness statement in the Reply. The Reply contains no evidence.

ARGUMENT

In responding to the Reply, ARZC will first address several procedural misstatements made by the Committee. ARZC will then address the substantive claims made by the Committee.

A. Procedural matters.

1. Discovery:

The Committee erroneously alleges that:

Formal abandonment procedure is essential for the adequate development of that issue, including discovery, review of workpapers, inspection of the rail line by hi-rail vehicle (the opportunity for which was refused by ARZC), and oral hearing

⁴ A newspaper of general circulation in San Bernardino and Riverside County.

⁵ *Arizona & California Railroad Company-Abandonment Exemption-in San Bernardino and Riverside Counties, CA*, Docket No. AB-1022 (Sub-No. 1X) (STB served April 1, 2009).

with cross-examination, all of which are not available under accelerated exemption procedure. Use of those procedural safeguards (that are available only in conjunction with formal application procedure) is required...

Reply at 5. The Committee continues to claim that it could not avail itself of discovery throughout the Reply at 12, 15, and 17 and alludes to the unavailability of discovery at 9, 11, and 14. There is no citation to statute, regulation or case law by the Committee for the proposition that it was not entitled to discovery. The reason that the Committee fails to provide a citation for the proposition that it is not entitled to discovery is because the Committee is wrong, discovery is specifically permitted in abandonment exemption proceedings.

The rules governing abandonment petitions for exemption are at 49 C.F.R. §1152.60, Special Rules. Those Special Rules at 49 C.F.R. §1152.60(a) state:

This section contains special rules applicable to any proceeding instituted under the 49 U.S.C. 10502 exemption procedure for either the abandonment of a rail line or the discontinuance of service or trackage rights over a rail line. General rules applicable to any proceeding filed under the 49 U.S.C. 10502 exemption procedure may be found at 49 CFR part 1121, but the rules in part 1152 control in case of any conflict with the general exemption rules.

The Special Rules do not address whether discovery is available when a petition for exemption is filed seeking to abandon a rail line. Since the Special Rules do not address discovery, and do not prohibit discovery, there is no "conflict" with the Rail Exemption Procedures at 49 C.F.R. §1121. Therefore, the discovery provisions of the Rail Exemption Procedures apply.

The section of the Rail Exemption Procedures that provides for discovery is Section 1121.2, titled Discovery. Section 1121.2 states: "Discovery shall follow the procedures set forth at 49 CFR part 1114, subpart B. Discovery may begin upon the filing of the petition for exemption." The Petition was filed on March 12, 2009. To date, the Committee has not served on ARZC or its counsel any request for discovery under 49 C.F.R. 1114 Subpart B. The

Committee did not request depositions (section 1114.22), submit written interrogatories (section 1114.26), request admissions (section 1114.27), request the production of documents (section 1114.30), or request entry upon land for inspection (section 1114.30). The Committee took no action to obtain "discovery, review of workpapers, inspection of the rail line by hi-rail vehicle" even though the Committee had the right to seek such information under Section 1121.2.

Instead of seeking discovery as permitted by the Board's rules, the Committee attempts to mislead the Board into concluding that ARZC denied the Committee access to inspect the Line as part of the discovery process. Reply at 12. On November 28, 2008, the Committee informally requested a hi-rail inspection of the Line. Because there was no formal proceeding at that time and due to the uncertain nature of the Committee as can be seen in the letter attached as Exhibit A, ARZC turned down the request. ARZC recognized that if the Committee requested an inspection under Section 1114.30 after ARZC filed the Petition, ARZC would agree to the inspection because there was no legitimate reason to object to the inspection under the Board's Discovery rules. However, the Committee never made use of the Board's clear rules permitting discovery in an abandonment exemption proceeding.

In addition to the clear rules permitting discovery in proceedings where a petition for exemption for abandonment was filed, the Board has recognized that discovery is appropriate in abandonment exemption proceedings.⁶

ARZC respectfully requests the Board to reject the Committee's erroneous claims that it could not build a full evidentiary record because the Committee was not entitled to discovery.

⁶ See *East Penn Railroad, LLC-Abandonment Exemption-in Berks and Montgomery Counties, PA*, STB Docket No. 1020X (STB served November 18, 2008). See also, *Central Railroad Company of Indiana-Abandonment Exemption-in Dearborn, Decatur, Franklin, Ripley, and*

The Committee was entitled to discovery, but for its own unrevealed reasons voluntarily elected not to make use of the discovery process.

2. Evidence.

Throughout the Reply, the Committee erroneously claims that it has or is submitting evidence on many issues. Reply at 5, 7, 8, 14, and 15. However, the Committee did not submit any evidence in this proceeding. The Committee submitted the argument in the Reply and three unverified letters. There are no verified statements included with the reply. There are no statements by any witnesses. Indeed, there are no unverified statements by any of the shippers who used the Line prior to embargo. There is no evidence in the Reply. There are no witnesses on behalf of the Committee that will allow the Board to test the relevance and competence of their testimony as required by The Federal Rules of Evidence in Rule 401, 402, 601, 602, and 603. Hence, the Committee has presented no probative evidence to counter that provided by ARZC.

The Board is quite familiar with proceedings where parties submit compelling evidence and what constitutes evidence. As an example, in abandonment proceedings where an offeror of financial assistance requests the Board to determine the net liquidation value of a rail line, the "burden of proof is on the offeror, as the proponent of the requested relief."⁷

Because the burden of proof is on the offeror, the rail carrier's evidence is accepted absent probative evidence supporting the offeror's estimates. In areas of disagreement, the offeror must present more specific evidence or analysis or provide more reliable and verifiable documentation than that which is submitted by the carrier. If the offeror does not present such superior evidence and/or

Shelby Counties, IN, STB Docket No. AB-459 (Sub-No. 2X) (STB served May 4, 1998), where discovery occurred in an abandonment exemption proceeding.

⁷ *R.J. Corman Railroad Company/Pennsylvania Lines, Inc.—Abandonment Exemption—in Clearfield, Jefferson, and Indiana Counties, PA*, STB Docket No. AB-491 (Sub-No. 2X) (STB served January 30, 2009).

documentation, the Board accepts the carrier's estimates in these forced-sale proceedings. See *Burlington Northern Railroad Company—Abandonment Exemption—in Sedgwick, Harvey and Reno Counties, KS*, Docket No. AB-6 (Sub-No. 358X) (ICC served June 30, 1994).⁸

In this proceeding, ARZC is the proponent of the requested relief, an exemption to abandon the Line. ARZC has submitted evidence to the Board. On the other hand, the Committee has not submitted any evidence to the Board, merely argument. ARZC's evidence is not only the superior evidence, but the only evidence, and ARZC requests the Board to accept ARZC's evidence as to the revenues, costs, net liquidation value, opportunity costs, and rehabilitation costs of the Line as uncontroverted.

The Board has accepted a railroad's avoidable cost evidence and maintenance of way evidence absent any evidence from the protestants to the contrary, even where the protestants claimed that evidentiary support was not provided for certain avoidable cost, i.e., labor, locomotive expense, locomotive fuel, track repairs and car hire. Notwithstanding the protestants problems with the railroad's lack of support for its cost estimates, the protestants did not provide any alternative costs or suggestions as to better or more accurate evidence. ARZC contends that this precedent applies to the instant proceeding and that the ARZC's cost evidence is acceptable, proper and has not been refuted by any evidence.⁹

3. Criteria.

The Committee wrongly contends that the Board must deny a petition for exemption and require the filing of an abandonment application when there is strenuous opposition and when

⁸ *Id.*

⁹ *Georgia Central Railway, L.P.—Abandonment Exemption—in Chatham County, GA*, STB Docket No. AB-367 (Sub-No. 2X) (STB served September 17, 1997).

revenues are not clearly marginal. Reply at 4. The Committee has misstated the criteria and overstated its case.

Recently when ruling on an opposed abandonment petition for exemption, where the petition was granted, the Board stated the appropriate criteria:

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power. ESPN has shown that continued operation of the line will impose a substantial economic burden on it and on interstate commerce that outweighs any potential harm to shippers and the local communities and that its proposal meets the criteria for granting an exemption.¹⁰

Particularly relevant to this proceeding, where ARZC provided substantial evidence and the Committee failed to make discovery requests or provide evidence, is the Board's statement in granting another abandonment petition for exemption:

no one has challenged these estimates with specific evidence. Given the evidence submitted and the lack of specific challenges, we will accept SJVR's rehabilitation estimate.¹¹

In determining whether to grant an abandonment the Board will:

balance the potential harm to affected shippers and communities against the present and future burden that continued operations could impose on the railroad and on interstate commerce. *Colorado v. United States*, 271 U.S. 153, 168-70 (1926). In weighing the burden on the carrier and on interstate commerce, we consider any drain on resources that keeping the line open would cause on the remainder of the rail system, due to operating losses on the line and/or lost

¹⁰ *East Penn Railroad, LLC—Abandonment Exemption—in Berks and Montgomery Counties, PA*, STB Docket No. AB-1020X (STB served November 18, 2008) at 11.

¹¹ *San Joaquin Valley Railroad Company—Abandonment Exemption—in Tulare County, CA*, STB Docket No. AB-398 (Sub-No. 7X) (STB served June 6, 2008) at 4.

“opportunity costs.” See *Farmland Indus., Inc. v. United States*, 642 F.2d 208 (7th Cir. 1981).¹²

ARZC agrees with the criteria established by the Board and requests the Board to apply those criteria in this proceeding instead of the unsupported criteria demanded by the Committee.

B. Response to the Committee’s arguments.

ARZC will now respond to the specific arguments made by the Committee.

1. An application was not required instead of the petition for exemption.¹³

The Committee contends that ARZC should have filed an application for abandonment authority instead of a petition for exemption because ARZC was on notice that there would be opposition. Reply at 5-6. The precedent relied on by the Committee¹⁴ is easily distinguished because there was a complaint proceeding pending at the Board at the time the abandonment petition for exemption was filed. There is no complaint pending at the Board or in any court (to the best of ARZC’s knowledge and belief) concerning the Line.

More recently, the Board stated that because the railroad knew that the abandonment would be strenuously opposed it should have filed an abandonment application or extensive information in support of a petition for exemption.¹⁵ ARZC chose to file a petition for

¹² *Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas, and Lane Counties, OR*, STB Docket No. AB-515 (Sub-No. 2) (STB served October 31, 2008), at 3.

¹³ Exhibit B distinguishes each decision cited by the Committee as precedent in the Reply, page 3.

¹⁴ *Central Railroad Company of Indiana—Abandonment Exemption—in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN*. STB Docket No. AB-459 (Sub-No. 2X) (STB served May 4, 1998).

¹⁵ See *The Burlington Northern and Santa Fe Railway Company—Abandonment of Chicago Area Trackage in Cook County, IL*, STB Docket No. AB-6 (Sub-No. 382X) (STB served September 21, 1999).

exemption supported by extensive information including three verified statements, two by responsible officers and one by a Board accepted expert in appraising railroad real estate.

2. An application was not required for detailed analysis of operating results, opportunity costs, and track rehabilitation costs.

Since the 1998 decision relied on by the Committee, the Board has permitted and granted abandonment petitions for exemption for Class III railroads. The Board's applications require the submission of significant financial information that is maintained by Class I railroads under the Branch Line Accounting System ("BLAS"), but is not required to be maintained by Class II or Class III railroads. As Mr. Frelich testified, "As a Class III railroad, ARZC does not maintain its records in accord with the BLAS." Petition Vol. I, at 107. Mr. Frelich used "data and resources available to [him] from the ARZC." *Id.* Were ARZC to have filed an application, it would have submitted the same information and the Committee would have had the same opportunity to seek discovery from ARZC and file opposition as it did in this proceeding.¹⁶

The Committee well knows that ARZC would present the same evidence in an application proceeding. Therefore, the only conclusion to be drawn from the Committee's position is that it is merely trying to delay the abandonment, which is contrary to the legislation concerning abandonments. If the Committee had the evidence it claims, it would have been appropriate for the Committee to submit that evidence in its Reply. However, for undisclosed reasons, the Committee elected not to submit any evidence.

¹⁶ The only difference between the procedure for applications and petitions for exemption discernable to ARZC is that in an application, the Committee would have had an additional five days to submit its opposition. However, since the Committee did not make use of available discovery, the five days difference seems de minimus.

a. Operating results.

The Committee claims that it will show that the Forecast Year earnings are understated because ARZC's service in 2006 was inadequate because service had declined from prior years. The Committee does not address the Board's criteria for determining whether adequate service was provided in 2006, which is:

a balancing test similar to the test applied in abandonment proceedings. We will weigh the public need for service over the line at the level sought in the complaint and compare that need with the burden on the carrier and on interstate commerce of providing service at that level. In applying this test, we will consider such factors as the traffic and revenue potentials of the line, the availability of alternative transportation, the condition and type of track, and the costs of putting the track into the condition necessary for the sought service and of maintaining the track in that condition.¹⁷

In failing to address the criteria for a determination of whether ARZC provided adequate service in 2006, which it did, the Committee fails to provide any evidence in support.

The Committee also claims that the traffic volume for the Forecast Year was understated because of potential future traffic suggested in unverified letters submitted by Standard Mine Company, Collective Asset Partners, and Noble Mine Company.¹⁸ The Committee is wrong in attempting to include such speculative traffic in the Forecast Year traffic. The three purported shippers identified by the Committee have not even contacted ARZC about shipping their products, do not indicate whether they are adjacent to the Line, or whether the current shipping rates, including the surcharge will move their traffic. The Board has rejected similar speculative traffic because there was no evidence of when the traffic would begin to move, the shipper had

¹⁷ *Illinois Central Gulf R. Co.-Abandonment*, 363 I.C.C. 690, 695 (1980).

not even contacted the railroad about rates, terms of service or when the embargoed line could be returned to service, because there was no evidence of contracts or otherwise to demonstrate that its traffic will move or when, and because the Board did not know the revenue the traffic would generate or the cost incurred by the railroad to serve the traffic.¹⁹

The Committee next questions the operating costs provided by Mr. Frelich in his verified statement. Petition Vol. I, at 108-110. The Committee claims that ARZC is required to substantiate its cost and that ARZC failed to do so. The Committee is wrong. ARZC has fully justified the operating costs through the verified statement of Mr. Frelich, which has not been challenged by competing testimony from the Committee.

ARZC urges the Board to reject the unsupported challenge to the operating results described by Mr. Frelich in his verified statement for the Forecast Year. ARZC has admitted that in the forecast Year, revenues would exceed costs by \$65,934.

b. Opportunity Costs.

In its introductory statement to the section entitled Opportunity Costs on Page 9 of the Reply, the Committee contends that ARZC is attempting to justify abandonment based on opportunity costs and forecast year revenue. The committee misstates ARZC's basis for seeking abandonment of the Line. A summary of ARZC's rationale for abandonment is provided in the Petition Vol. I, at 11-12. Briefly, ARZC generated gross revenues from its entire railroad of about \$8.2 million in 2007. ARZC points out that opportunity cost of \$666,326 and rehabilitation cost of \$4,716,480 create a burden on ARZC and interstate commerce that

¹⁸ The Committee claims that these three unknown entities attested to the prospect for future traffic. However, the Board's rules require an attestation to be under oath or pursuant to an affirmation, 49 C.F.R. §1104.4(b)(3) and .5.

substantially outweigh the burden on shippers. In addition, ARZC will be able to obtain about \$3,850,480 from the sale of the track and materials for use on other portions of the ARZC or to reduce the debt of the ARZC. Moreover, ARZC points out that its last four years of operations over the Line resulted in losses, despite the theoretical excess revenue to cost shown in the Forecast Year. ARZC does not just rely on opportunity costs to justify abandonment.

The Committee next questions, but presents no evidence contrary to, the net liquidation value (the "NLV") of the track and materials and land.

ARZC is proposing to abandon the Line, all 49.4 miles between mileposts 0.0 and 49.4, including sidings, spur track, and all other auxiliary track. ARZC is being forced to hold the Line and has earned no return on the value of the track and materials since at least since 2004. The heading on Appendix I to Mr. Bader's Verified Statement, Petition Vol. I, at 92, is wrong as can be seen from the mileage of material included. If the heading were correct, ARZC would have understated the NLV of the track and material.

The Committee also contends that ARZC should be required to reduce the NLV of the track and material by 10 percent because ARZC proposes to keep a portion of the Line between mileposts 0.0 and 4.0 for the storage of cars. The Committee's logic is faulty. In abandonment proceedings, the Board measures the burden of the existing rail line on railroad operations. If ARZC were required to continue to operate the Line, as the Committee seeks, ARZC would continue to incur the opportunity cost burden on the four miles between mileposts 0.0 and 4.0. If, as requested and justified by ARZC, the Board grants the abandonment exemption, ARZC will be able to abandon the Line, including the four miles between mileposts 0.0 and 4.0, or if

¹⁹ *Union Pacific Railroad Company—Discontinuance—In Utah County, Utah*, STB Docket No. AB-33 (Sub-No. 209) (STB served January 2, 2008) at 3.

ARZC determines that it will earn a reasonable return on car storage, reclassify the four miles as spur track and store rail cars during the current economic downturn.

The Committee is wrong when it argues that ARZC did not justify its classification of the quantity and quality of the track and materials. Mr. Bader specifically addressed this issue. Mr. Bader is Chief Line Engineer for the West Region of RailAmerica, Inc., which includes ARZC, and is responsible for engineering and maintenance activities. Petition Vol. I, at 83. Mr. Bader explains:

Each of the RailAmerica subsidiary railroads that I am responsible for maintains an inventory of track and materials on its lines under my supervision. In addition, each railroad conducts regular inspections of its lines to maintain the accuracy of the inventory and the condition of the inventory. Appendix 1, which is attached to this verified statement, is the list of inventory on the Line:

The inventory includes rail, other track material ("OTM"), ties, signals, and turnouts. The rail, OTM, and turnouts are classified as relay, reroll, or scrap. The valuations are based on recent quotations obtained by ARZC and RailAmerica from rail suppliers and quotations in national publications. Liquidation costs are based on my experience with the cost of removal and transportation and recent quotations received by ARZC and RailAmerica for removal and transportation.

Appendix 1 includes the rail, OTM, ties, signals, and turnouts on the 49.40-mile main line and also the rail, OTM, ties, signals, and turnouts for sidings, team tracks, spurs, and other ancillary tracks used in the operation of the Line.

As shown in Appendix 1, the net liquidation value of the railroad assets will be \$2,149,480.

Petition Vol. I, at 84. ARZC has provided full support and an explanation for its classification of the quality and quantity of track. It is the Committee that provided no evidence to the Board questioning the quantity and quality of the track and materials.

The Committee makes the same illogical argument concerning the four miles of land between mileposts 0.0 and 4.0 that it made concerning the track and materials. ARZC adopts its prior response.

The Committee next argues that ARZC may not have fee title to the Line's real estate, but again provides no evidence to contradict ARZC. The Committee states that in the copy of the Petition that it obtained, it cannot clearly make out the information on accompanying valuation maps because of their condition and size. First, the Committee did not even ask ARZC for a copy of the Petition, which ARZC would have provided, so ARZC cannot comment on the quality of the copy of the Petition that the Committee obtained. Second, as ARZC has already discussed, the Committee did not seek discovery from ARZC to clarify the issues raised by the Committee concerning title. Indeed, ARZC would have voluntarily provided the information sought by the Committee if the Committee had informally contacted ARZC's counsel.

Mr. Rex explained that he appraised the entire Line and that out of 928.3± acres in the Line, only 221.2± acres are owned in fee. Petition Vol. II, at 11. Based on his expertise, which the Board has recognized²⁰, Mr. Rex determined that the NLV of the land is \$1,701,000. Petition Vol. II, at 5.

c. Rehabilitation costs.

The Committee's argument concerning track rehabilitation begins with its claim that its request to inspect the Line was denied by ARZC in January 2008, well before the Petition was filed on February 12, 2009. ARZC has already explained this issue in Section A.1. of this Rebuttal and adopts that response here. In addition, if the Committee had availed itself of the discovery that was available in this proceeding, ARZC would have permitted an inspection.

²⁰ *Oregon International Port Of Coos Bay—Feeder Line Application—Coos Bay Line of the Central Oregon & Pacific Railroad, Inc.*, STB Finance Docket No. 35160 (STB served October 31, 2008) at 12.

Only the Committee can explain why it did not seek discovery and did not present evidence concerning the cost to rehabilitate the Line.

The Committee argues that because 90 percent of the track was FRA Class 1 before the embargo, the track could not have deteriorated and the cost to rehabilitate 5.4 miles of track is "incredible." Reply at 12. Again, the Committee provided no evidence; it merely makes unsupported inferences based on twisted readings of Mr. Bader's testimony. Petition Vol. I at 84-87.

The Committee states that the Line could not have deteriorated after the embargo was imposed. This statement demonstrates the naiveté of the Committee concerning rail operations in the California desert. The predicted high and low temperature in Blythe, CA for May 9, 2009 was 104°F and 70°F, respectively. <http://www.wunderground.com/US/CA/Blythe.html> (May 9, 2009). Obviously, the Committee is unfamiliar with the expansion and contraction of steel caused by changes in heat and cold. Such changes in temperature over more than a year will stress and damage brittle rail that has been in place for nearly 90 years and is around 100 years old. Contrary to the Committee's argument, even without traffic the old track on the Line would continue to deteriorate. The Committee is wrong that an ancient line of railroad does not deteriorate even without use and the Committee has offered no evidence to support its claim. The Committee has performed no inspection of the Line, compared to ARZC who did inspect the Line.

Regardless of whether the track would continue to deteriorate, Mr. Bader identified 5.4 miles of track that required rehabilitation. Petition Vol. I at 84. However, Mr. Bader only recommends replacing 3.9 miles of 90 pound rail that was rolled between 1911 and 1913 because of the wear caused over 90 years of use on the curvature and grade of Styx Hill. Petition Vol. I,

at 85. The Committee argues that FRA does not require rail to be replaced because of its weight. ARZC agrees with that statement. However, FRA does specifically require the replacement of defective rail under 49 C.F.R. 213.113(a). Mr. Bader has determined that 3.9 miles of rail is defective and must be replaced as required by FRA. The Committee has presented no evidence to counter Mr. Bader's expert testimony. Mr. Bader has explained that he would like to replace all of the 85 pound rail in the Line, but that he has only included the cost of replacing the 3.9 miles of rail to bring the Line to FRA Class I. Petition Vol. I, at 85.

With regard to tie replacement, the Committee begins its argument by arguing that the number of ties proposed to be replaced by ARZC "is wildly overstated." Reply at 13. The Committee does not rely on an inspection of the Line, as did ARZC. Instead, the Committee attempts to use gross calculations to support its unsubstantiated allegation. The Board has accepted a cost of \$192,000 to replace ties in four miles of track.²¹ If the four miles were expanded to 49.4 miles, the cost for ties would have exceeded \$2,370,000, nearly \$300,000 more than the cost of ties estimated by Mr. Bader. Petition Vol. I, at 86. Based on Board precedent, the rehabilitation cost for ties is not "wildly overstated."

The Committee next argues based on its baseless calculations that ARZC is replacing 33 percent of the ties on a non-contiguous 11 mile section of the Line and that the FRA rules at 49 C.F.R. 213.109(c) only requires 25 percent good ties. The Committee has misrepresented the contents of Section 213.109(c). ARZC has read and conducted an electronic search of the section and has not found any reference to 25 percent. The Board should reject the Committee's entire argument concerning ties because of its misrepresentation. However, the Line between

²¹ *Minnesota Northern Railroad, Inc.—Abandonment Exemption—in Norman County, MN*, STB Docket No. AB-497 (Sub-No. 4X) (STB served December 3, 2008) at 2.

mileposts 14 and 17 is included in Styx Hill (mileposts 13.8 to 18.0), which Mr. Bader states requires substantial rehabilitation because of grade and curvature. Petition Vol. I, at 85. The portion of the Line between mileposts 43 and 49 is at the southern end of the Line where there is traffic and that portion of the Line is used for substantial switching for the delivery of empty cars for loading and loaded cars for unloading and the pick-up of empty and loaded cars. Such heavy use requires substantial rehabilitation as indicated by Mr. Bader.

Finally, the Committee states that "it has seen enough of the rail line to know that ARZC's assertion in that respect [as to the number of ties requiring replacement] is utterly false." Reply at 14. ARZC respectfully requests that the Board ignore or give no weight to this statement. The person making the observation and the location of the observation is not provided. No sworn testimony to this effect is included in the Reply. Finally, the Committee adds a footnote at page 14 of the Reply attempting to disavow actions taken by the City of Blythe confirming the cost of rehabilitation, again without any support or evidence. The Committee would have the Board believe that the duly elected representatives of the City of Blythe would agree to spend over \$5 million of the money of the people of Blythe and California to rehabilitate the Line without conducting any due diligence to determine whether the cost of rehabilitation proposed by ARZC was correct. Even more disturbing is the inference that the City of Blythe would submit an application to the State of California for over \$5 million to rehabilitate the Line without verifying independently the amount of funding needed.

Regardless of whether or not Blythe endorsed the cost of rehabilitating the Line, which ARZC believes Blythe did, Mr. Bader has justified the cost of rehabilitation, and the Committee has not produced a single piece of evidence to counter Mr. Bader. ARZC urges the Board to

reject the baseless argument of the Committee concerning the cost of rehabilitation and to accept the cost of rehabilitation justified by evidence submitted by ARZC of \$4,716,480.

3. ARZC did not deliberately downgrade the Line.

Whether a carrier has engaged in deliberate downgrading depends on the carrier's intent. The Interstate Commerce Commission and the Board, focus on the following criteria for evaluating allegations of deliberate downgrading: (1) the nature of the service and the public need shown in the past for the service; (2) the effect of the carrier's act; (3) the need demonstrated by a carrier to economize; and (4) any evidence of specific intent to turn what could be a profitable operation into a deficit operation in perfecting a case for abandonment.²² The Committee argues that ARZC's behavior regarding rail service, use of surcharge revenues and the continued embargo point to an intentional downgrading of service but does not refer to the above criteria. The Committee provides no evidence to support its position other than to cite to the traffic information provided by ARZC and to cite to unsubstantiated instances of ARZC's inability to provide service. ARZC is responding to the arguments made by the Committee; it does not seek to file any new evidence or rely on any evidence not already submitted in its case-in-chief.

ARZC has not intentionally downgraded the Line. In filing its petition for abandonment, ARZC relies on a Forecast Year traffic level of 450 carloads, the average number of cars shipped from 2004-2007 despite the fact that traffic has declined over that time span. Traffic on the line has declined since 2004 and service has been provided based on the needs of the remaining

²² *Central Oregon & Pacific Railroad, Inc.—Abandonment and Discontinuance of Service—in Coos, Douglas, and Lane Counties, OR*, STB Docket No. AB-515 (Sub-No. 2) (STB served Oct. 31, 2008 and *Missouri-Kansas-Texas R. Co. Abandonment, Okla.*, 338 I.C.C. 728, 746-47 (1971).

traffic. The Committee, however, maintains that the decline in traffic was caused by a decline in ARZC's services, arguing that there was no reduction in rail line traffic after 2005 that supported reducing service from a weekly basis to a monthly basis in 2006 and that service declined even further in 2007 causing an additional decline in traffic. The Committee ignores the fact that America Cast Iron Pipe Company, who received 248 carloads of pipe in 2005 and 18 carloads of pipe in 2007 completed the project requiring pipe and stopped shipping over the Line; 5 Star Lumber, Seimens Westinghouse, and Cleveland Westinghouse stopped using the Line in 2005 or 2006; and Arizona Grain, a member of the Committee, in 2006 shipped half of what it shipped in 2005 and did not ship any carloads in 2007. Petition Vol. I, at 6 and 107. On December 8, 2006, ARZC imposed an \$800 surcharge on carloads that shipped on the Line to provide funds to continue to maintain the Line due to its age. Petition Vol. I, at 5. In 2007, to avoid the surcharge, many shippers chose to transload their shipments, thus reducing traffic on the Line to 257 carloads. Petition Vol. I, at 107-108. Based on the above facts, it is clear that service on the Line was reduced because of a decline in the traffic, not the other way around.

The Committee suggests three separate instances where ARZC failed to provide the requested services to a shipper. According to the Committee, ARZC did not provide requested cars to Arizona Grain, Inc. during a time in 2008 when the Line was not embargoed; cars for Compton Ag Service had to be offloaded because ARZC would not transport them across the rail line; and a vendor for Helena Chemical Company refused to accept a purchase order because it was told by ARZC that service over the Line was not available. The Committee does not provide any documentation or verified statements supporting any of these claims. The request for car service was during a 3 day period in December of 2008 when the embargo was inadvertently not reissued. Petition Vol. I, at 5.

The imposition of the \$800 surcharge was not an attempt to "pocket funds" as the Committee asserts, but rather an attempt by ARZC to continue providing service on the Line for as long as possible given the age of the Line. Petition, Vol. I, at 5. The Line was built in 1920 using a substantial amount of used rail. The rail is old and in poor condition. Ninety percent of the rail is 90 pounds or less and most was rolled in the early twentieth century. Petition Vol. I, at 85. The surcharge did not generate sufficient revenue to maintain the Line because of the decline in traffic and the decisions of shippers to transload traffic to avoid the surcharge. *Id.* In 2006, a surcharge was applied to 10 carloads and in 2007 a surcharge was applied to 147 carloads for a total of \$125,600. Petition Vol. I, at 107-108. The revenue generated from the surcharge for 13 months was not enough to cover the annual maintenance-of-way cost of \$143,500 for the Line. Petition Vol. I, at 87-89. Because the Line did not generate enough traffic to create revenues sufficient to maintain the Line, ARZC imposed an embargo on December 18, 2007 due to the condition of the track. Petition Vol. I, at 5, 129-130.

Here again, the Committee could have sought discovery to develop a record for the Board. The Committee failed to make use of the available discovery. The Committee has again produced no evidence to confirm its unfounded argument that ARZC deliberately downgraded the Line. ARZC respectfully requests the Board to conclude that ARZC did not deliberately downgrade service, but instead took reasonable steps to economize operations because declining traffic.

4. ARZC provided the required notice.

The Committee makes the unfounded allegation that the San Bernardino Sun is not a newspaper of general circulation in Riverside County. Although the San Bernardino Sun is published and based in San Bernardino County, it is in general circulation in numerous parts of

Riverside County, including Calimesa, Beaumont, Banning, Moreno Valley, Ripley, and Palo Verde. "The Board requires that notice be published in a newspaper of general circulation in each county in which the line is located. The Board does not require that the newspaper be locally published or comply with local government requirements as a newspaper that publishes certain local matters."²³ In addition, as admitted by the Committee, it had actual notice of the proposed abandonment. Reply at 5-6.

²³ New York Central Lines, LLC-Abandonment Exemption-in Montgomery and Schenectady Counties, NY, STB Docket No. 565 (Sub-No. 14X) (STB served January 22, 2004) at 3.

5. If the Board denies ARZC's Petition for Abandonment, There Should Be No Preconditions to Filing an Abandonment Application.

The Committee asks the Board to require ARZC to remove the embargo, establish a schedule of service, publish any surcharge on 20 days' notice, and earmark any surcharge revenues for track maintenance prior to ARZC filing an application for abandonment. The Committee's request is an unreasonable practice claim disguised as opposition to the Petition.

If the Committee believes that the embargo is unreasonable or that they have not received service upon reasonable request, the appropriate avenue for these grievances is to file a formal complaint under 49 U.S.C. § 10702 to allow the Board to determine the reasonableness of ARZC's actions. Requesting that the Board impose removal of the embargo and establishment of a service schedule as a precondition to an application for abandonment is not appropriate. Additionally, if the Committee questions the validity of the maintenance surcharge an unreasonable rate or practice complaint is the appropriate avenue for addressing the surcharge, not an abandonment proceeding.

A denial of ARZC's petition for abandonment formally ends this proceeding. The Committee does not get to precondition and define when ARZC can file for abandonment authority in the future.

6. Summary.

ARZC filed its case-in-chief in the Petition. In the Petition, ARZC demonstrated that the continued ownership and operation of the Line by ARZC will continue to be a burden on ARZC and interstate commerce. ARZC will incur rehabilitation costs of \$4,716,480 and annual opportunity costs of \$666,326. If the Line continues to generate Forecast Year traffic and if ARZC can continue to impose the \$800 per car surcharge, the Line would generate net operating

revenue of \$65,934 per year. However, this net operating revenue is insufficient to cover opportunity costs, much less the cost of rehabilitation. In lieu of carrying this burden, ARZC could sell or reuse track and material worth \$2,149,480 and could sell the real estate for \$1,701,000, all of which could be used elsewhere on the ARZC or to reduce debt. In addition, there is alternate transportation service available.

For the past four years of operation, ARZC incurred an actual loss from operations. Even in 2007 when ARZC received surcharge revenue, it lost \$170,799. Prior to the surcharge, traffic was trending downward from 711 to 660 to 450 to 257 carloads between 2004 and 2007. During that time, ARZC was not recovering its opportunity costs of \$666,326 per year and was not generating any profit to apply to the staggering rehabilitations costs. ARZC's gross revenues in 2007 were about \$8.2 million. ARZC owns and operates about 240 miles of track. It is not economically rational to expect ARZC to commit over 75 percent of the gross revenue from one year to rehabilitate about 20 percent of its mileage when the traffic trend on that Line has been downward and the Line has lost money in each of the four last years of operations. ARZC embargoed the Line to stop the hemorrhaging of money and to avoid the completely unjustifiable rehabilitation costs.

It has been argued that reduced service and the surcharge have forced shippers to stop using the Line. ARZC was trying to turn a line that was losing money into one that approached break even. First, ARZC reduced the frequency of service to reduce costs. However, traffic declined, even though service was provided on a regular basis in 2004 and 2005. When traffic continued to decline, ARZC attempted to recoup its losses through a surcharge. However, traffic continued to decline. While this was occurring, ARZC deferred the substantial rehabilitation of

the Line that was required. The additional revenue generated by the surcharge in 2007 was not even enough to cover ARZC's operating costs, much less provide funds to rehabilitate the Line.

ARZC contends that in balancing the harm to it and interstate commerce against the harm to shippers and local interests, the balance clearly favors abandonment because it lost money in its last four years of operation, is incurring opportunity costs of \$666,326 per year, requires rehabilitation of \$4,716,480 to return the Line to FRA Class I condition, and projects Forecast Year revenue of only \$65,934 to offset these costs.

In response, the Committee has not filed any evidence to be weighed against that filed by ARZC. The unsupported arguments made by the Committee do not warrant denial of the Petition. Even though ARZC might earn revenue in the hypothetical Forecast Year, the Board has "granted an abandonment exemption where a Class I railroad had marginally profitable operations."²⁴

²⁴ *BNSF Railway Company—Abandonment Exemption—in King County, WA*, STB Docket No. AB-6 (Sub-No. 465X) (STB served November 28, 2008).

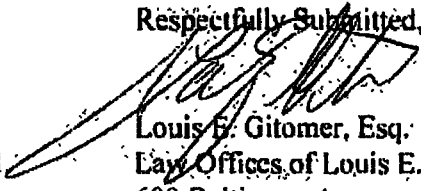
CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 to the abandonment of the Line proposed by ARZC is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously shown. Nor is Board regulation required to protect shippers from the abuse of market power. Moreover, this abandonment is of limited scope.

Accordingly, ARZC respectfully urges the Board to grant an exemption for the proposed abandonment of the Line.

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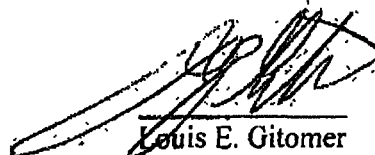
Attorneys for: ARIZONA & CALIFORNIA
RAILROAD COMPANY

Dated: May 11, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Motion for Leave to File Rebuttal in Docket No. AB-1022 (Sub-No. 1X), *Arizona & California Railroad Company—Abandonment Exemption—in San Bernardino and Riverside Counties, CA (Between Rice and Ripley)*, was served electronically on May 11, 2009, on the following parties:

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112



Louis E. Gitomer
May 11, 2009

EXHIBIT A

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November 20, 2008

By e-mail to lou.gitomer@verizon.net

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Re: STB Docket No. AB-1022 (Sub-No. 1X), *Arizona & California Railroad Company -- Aband. Exempt. -- in San Bernadino and Riverside Counties, CA*

Dear Lou:

I represent the Committee to Preserve the Rice-Blythe-Ripley Rail Line (the Committee). The Committee intends to oppose the abandonment of the Rice-Blythe-Ripley rail line that is proposed by Arizona & California Railroad Company (ARZC) in the above proceeding. The Committee is still in formation. At present, Committee members include Arizona Grain, Inc.; the City of Blythe, California; and the Community Improvement Fund.

In behalf of the Committee, I am hereby requesting ARZC to conduct a hi-rail inspection trip over the involved rail line that would be attended by the Committee's consultant, Mr. Gary Hunter. In view of the accelerated time frame for processing abandonment applications, ARZC is respectfully requested to arrange for a hi-rail inspection trip as soon as possible.

Please advise.

Very truly yours,

Tom McFarland

Thomas F. McFarland
*Attorney for the Committee to Preserve
the Rice-Blythe-Ripley Rail Line*

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cc: Hon. Anne K. Quinlan, *by e-filing*
Mr. Gary Hunter, *by e-mail to gvh@railroadindustries.com*

EXHIBIT B

EXHIBIT B

The decisions cited by the Committee for proposition that the Board must deny a petition for exemption of an abandonment where shippers contest the proposed abandonment, and where the revenues from their traffic were not clearly marginal compared to the cost of operating the rail line proposed for abandonment are clearly distinguishable from this proceeding. In each of the cited cases it was questionable whether the railroad's costs exceeded its revenues (because the railroad did not file sufficient evidence or the evidence was contradicted) either for the entire line or a portion of the line.

1. *Lake States Railway Co.—Abandonment Exemption—Rail Line in Otsego County, MI*, STB Docket No. AB-534 (Sub-No: 3X) (STB served July 16, 2007).

In this proceeding, the Board denied the petition because the record was inadequate to determine that the abandonment exemption was warranted, not where the Board found revenues from traffic more than marginal compared to the cost of operating. Specifically the Board found that Lake Street Railway Co. ("LSRC") based its case on a set of facts that were substantially different from the situation that existed at the time LSRC filed for abandonment, and which would exist in the immediate future. LSRC used operating cost data from 2005 when LSRC operated on the line 3 days a week but in 2006 LSRC reduced operations to once a week or less. It did not reduce its operating costs to reflect the diminished service. LSRC provided evidence of past operational costs and revenues on the line. It did not address its current cost or limit its costs to rail operations (snow removal costs were questionable because they include costs to facilitate recreational snowmobiling along the right-of-way that may not be related to actual maintenance of the line for rail service). There was also no evidence comparing the projected costs to the

projected revenues expected to be derived from the line that would be lost to the carrier if the line were abandoned.

A shipper on the line challenged the presentation made by the railroad and LSRC did not refute that challenge.

2. *CSX Transportation, Inc.—Abandonment Exemption—(Between Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 590X) (STB served Dec. 12, 2001).

The shipper in this proceeding challenged the abandonment of the portion of the line where the shipper was located and the shipper claimed that portion of the line was highly profitable. In the ARZC abandonment, the Committee challenges the abandonment of the entire line and does not claim that the line is profitable but that the revenue was not marginal compared to the cost of operating the line.

The Board found that there was insufficient information for it to make an informed decision on the merits given the opposition and petitioner's failure to show that the situation imposed burdens on the railroad that outweighed the harm if the line were abandoned. ARZC has clearly demonstrated the burden on ARZC and interstate commerce.

3. *The Burlington Northern and Santa Fe Railway Company—Abandonment of Chicago Area Trackage in Cook County, IL*, STB Docket No. AB-6 (Sub-No. 382X) (STB served Sept. 21, 1999).

The shippers were located on the first half of the line and only challenged the abandonment of that portion of the line. The shippers provided evidence contradicting the railroad's evidence regarding the number of cars shipped over the line in the base year, and the railroad did not provide any forecast year data. Thus the Board could not reasonably rely on the railroad's evidence. In the ARZC abandonment, the Committee is challenging the abandonment

of the entire line and has not provided any evidence to contradict the significant amount of evidence and information provided by the railroad.

BNSF sought to abandon switching and industrial lead track. The shippers were all located on and opposed the abandonment of the first 1.25-mile segment of the 2.38 mile line. The shippers challenged the number of cars the railroad stated were shipped in the base year and provided evidence in support of their challenge. The railroad did not provide sufficient underlying data on rail car service or forecast year data.

The Board stated that BNSF, knowing there would be opposition, should have filed an application for abandonment or extensive information, augmented by detailed workpapers in support of a petition for exemption. The Board concluded that the little evidence that BNSF submitted (incomplete revenue and cost data) was not enough to determine the profitability of the line and its case-in-chief was fatally flawed because the evidence it did submit was unsupported and contravened by the shippers.

In the ARZC abandonment, ARZC submitted detailed information that was not contradicted by any evidence filed by the Committee.

4. Gauley River Railroad LLC -Abandonment and Discontinuance of Service—in Webster and Nicholas Counties, WV, STB Docket No. AB-559 (Sub-No. 1X) (STB served June 16, 1999).

In this proceeding the railroad did not provide the evidence necessary to determine whether its costs exceeded its revenues and based on the information that the railroad did provide, the Board determined that it was unlikely that costs exceeded revenues. ARZC, on the other hand, has provided substantial evidence of its revenues and costs, while the Committee has provided no evidence as to revenues and costs.

No traffic had moved over the lines since their purchase in 1994 and no shipper had made a firm commitment to tender traffic in the future. The Board found that the railroad received regular monthly payments to retain the lines and that the railroad had failed to demonstrate that the costs attributable to the lines exceeded the revenues it received. The Board also found that additional information was needed to determine that locomotive costs could be attributed to the lines and that the record was unclear about the amount of rehabilitation and maintenance expenses that would be needed for rail service.

One shipper submitted testimony on the cost for rehabilitating the portion of the line necessary to provide service to it. The railroad also provided a total for the interest expenses it had incurred in the purchase of the lines but did not give monthly costs to enable the Board to compare costs to revenue. However, the Board, based on the amount of time that the railroad owned the line and the date of when the interest expenses were filed, found it likely that the monthly expenses did not exceed the revenue from the lines.

This decision was reopened based on new evidence showing substantially changed circumstances and the abandonment granted. The railroad no longer received subsidy payments from the shipper and the petitioners who opposed the proceeding withdrew their opposition. The petitioners argued that even excluding the locomotive costs and rehabilitation and maintenance costs that were questioned in the original decision, the railroad was continuing to incur ownership costs for interest and property tax, which were not being offset by attributable revenues. *Gauley River Railroad LLC—Abandonment and Discontinuance of Service—in Webster and Nicholas Counties, WV*, STB Docket No. AB-559 (Sub-No. 1X) (STB served June 23, 2000).

5. *Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—in Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 3X) (STB served Sept. 18, 1998).

This proceeding involved the abandonment of two line segments where the majority of revenue was generated on the shorter segment and the railroad failed to separate out the costs and revenues for each segment. The railroad also failed to provide any data on the costs associated with operating each segment. In the ARZC abandonment, the shippers, who provided no evidence opposing what was submitted by ARZC, are challenging one line where the costs for the line and the revenues generated on the line have been submitted as evidence.

In the Buffalo & Pittsburgh Railroad, Inc. ("B&P") abandonment, B&P did not present any data on the cost of conducting rail operations over the lines. The majority of the revenue was generated on the 9-mile segment. One shipper on the line asked that the cost and revenue data be bifurcated so that the shipper could show that shorter line segment was profitable. The Board found that it could not authorize the abandonment of the 9-mile segment because there was no information on the costs attributable to the line and the shipper challenging the abandonment had justified treating it as a separate part of the petition. The Board also found that it could not authorize the abandonment of the 43-mile line because the railroad relied solely on the argument that the costs of maintaining the line and paying taxes on it exceeded the revenues it received and expected to receive from shippers that used the line. Protestants challenged both arguments and provided evidence of a State grant that B&P could have used to cover maintenance. The Board found that B&P's argument that its taxes would decrease after abandonment because railroad property was taxed differently than other property was not supported by reference to the specific law or a verified statement.

6. *Central Railroad Company of Indiana—Abandonment Exemption—in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN.* STB Docket No. AB-459 (Sub-No. 2X) (STB served May 4, 1998).

In AB-459 (Sub-No. 2X), unlike the ARZC abandonment, protestants presented evidence, including detailed inspection documents, that differed from that of the railroad's regarding revenue, operating expenses and maintenance, leading the Board to question the accuracy and completeness of the railroad's evidence. In the ARZC abandonment, the Committee did not provide any evidence to support its arguments challenging the data submitted by ARZC.

- In AB-459 (Sub-No. 2X), the railroad's evidence did not contain workpapers or other documentation, and thus was little more than unsupported assertions. The Board found, based on the record (evidence submitted by the protestants), that the line did not need any general rehabilitation to meet FRA Class 1 standards. Even though the shippers stated that they would raise the amount of traffic on the line, the Board did not readily accept the shippers' promises to triple their traffic subject to "reasonable" service. The shippers' evidence raised concerns about the accuracy and completeness of the railroad's revenues, specifically regarding one shipper's local traffic and overhead traffic. In addition, the protestants raised questions regarding the status of the Westport Industrial Track (whether it was part of the mainline or spur track) and the railroad's intentions regarding a line it had trackage rights over.

7. *San Joaquin Valley Railroad Company—Abandonment Exemption—in Kings and Fresno Counties, CA.* STB Docket No. AB-398 (Sub-No. 4x) (STB served May 23, 1997).

In AB-No. 398 (Sub-No. 4X), shippers who had shipped on the line prior to the embargo wanted service restored, were willing to help finance the restoration and were willing to guarantee the carload minimum set by the railroad. Whereas, in the ARZC abandonment, the shippers who have submitted letters stating they would use rail service have not shipped on the line before (Standard Mine Company, Collective Asset Partners and the Noble Mine Company), do not yet have product to ship (Collective Asset Partners and the Noble Mine Company) and have not stated a willingness to commit to a certain shipping level. Additionally, ARZC submitted sufficient information on operating revenues and costs.

The Board found in AB-No. 398 (Sub-No. 4X), that there was insufficient information to make an informed decision on the merits of the proposed abandonment exemption because the railroad did not provide a breakdown of the operating revenues and costs for the revenue it said it generated in 1995 before the line was embargoed. The railroad did not present track inspection reports or other documents to demonstrate that the entire line needed rehabilitation or to support its rehabilitation estimate and did not provide cost and revenue information to support the carload annual minimum level commitment that it sought. The Board also found that the shippers wanted the line restored, appeared willing to help finance the rehabilitation, and asserted that their collective traffic would exceed the carload annual minimum set by the railroad.

8. *Tulare Valley Railroad Company—Abandonment and Discontinuance Exemption—in Tulare and Kern Counties, CA.* STB Docket No. AB-397 (Sub-No. 5X) (STB served Feb. 21, 1997).

The Board denied the petition for exemption in AB-397 (Sub-No. 5X) to the extent that it applied to the last 5.9-miles of a 25.7-mile line because the railroad failed to provide evidence that that section of line could not be operated profitably, the shipper had shown that it had made a recent, substantial investment in its facilities based on continued rail service, and the shipper raised doubts as to the availability of viable transportation alternatives. Here, the Committee is opposing ARZC's abandonment of the entire line and is arguing that the revenues are not marginal compared to the operating expense, not that the line could be operated profitably if the railroad had submitted sufficient evidence.

9. *Boston and Maine Corporation—Abandonment Exemption—in Hartford and New Haven Counties, CT.* STB Docket No. AB-32 (Sub-No. 75X) (STB served Dec. 31, 1996).

The line was embargoed and the railroad sought abandonment because the cost of rehabilitation and maintenance were not justified by the low volume of traffic and poor revenue generated by the line. The railroad originally filed a formal application for abandonment but amended its filing and requested an exemption to expedite the abandonment because the town wanted to buy the line for trail use using fiscal 1996 funds and because the two shippers on the line would not be harmed. Contrary to the railroad's assertion, the town opposed the abandonment and argued that the City needed an active rail line. The shippers on the line presented evidence that they would be harmed by the transaction, even raising doubts about whether they would have access to alternative transportation.

The shippers on the line also raise doubts on whether the line was unprofitable, disputed the forecast year projections and asserted that shipments moved over the line after the line was

embargoed. A shipper on the line submitted an appraisal for a portion of the line that was significantly lower than the railroad's appraisal because of the potential environmental contamination of the line from an adjacent property. The shipper also asserted that the railroad's forecast year revenues would exceed those of the railroad's base year revenues because the shipper's business had increased. The railroad did not refute the shippers' arguments in its reply.

The Board found that without supporting evidence on the cost of restoring the line and a more representative forecast year projection it could not grant an exemption.

10. *CSX Transportation, Inc.—Abandonment Exemption—in Grant, Delaware, Henry, Randolph, and Wayne Counties, IN*, Docket No. AB-55 (Sub-282X) (ICC served Oct. 6, 1989).

There was significant opposition to the abandonment exemption, including five shippers, Federal, State and local officials, a shortline railroad, and business organizations. The Commission found that the protestants raised serious questions about the proposal, including the financial condition of the line; traffic levels for local, switched and overhead traffic; and the rerouting of traffic. With regarding to rerouting, the protestants challenged routing decisions on efficiency grounds and on the grounds that the reroutings' were of questionable availability or would not meet the shippers needs. In the ARZC abandonment, there is no evidence countering ARZC's evidence demonstrating that the line is a burden on ARZC and interstate commerce, there are no questions about routing traffic, there is no Federal or State opposition, and the Committee accepts ARZC's proposed traffic.